

FIRM ENERGY PURCHASE AGREEMENT

This FIRM ENERGY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between the Department of Water Resources with respect to its responsibilities regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and the Seller set forth on signature line below (the "Seller").

WITNESSETH:

WHEREAS, the Seller wishes to sell firm energy to the Department under the terms set forth herein, and

WHEREAS, the Department has determined to purchase firm energy from Seller under the terms set forth herein; and

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Authorized Representative" shall mean the person or persons designated in Appendix B as having full authority to act on behalf of a party for all purposes hereof.

"Billing Address" means the billing address specified in Appendix B or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in New York City.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the delivery point described in Appendix A.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Firm Energy" means the firm energy delivery and purchase set forth in Appendix A hereto.

"Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations for transactions under this Agreement.

"Guarantor" means the entity providing a guarantee pursuant to a Guarantee Agreement.

"Invoice Month" means the calendar month after the delivery of Firm Energy for which an invoice is being issued.

"Investment Grade" means with respect to the Seller a rating on the Seller's senior long-term unsecured debt obligations of "BBB" from S&P and "Baa" from Moody's.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

"Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Moody's" means Moody's Investor's Services, Inc., or its successor.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 6.03.

"Present Value Rate" shall have the meaning set forth in Section 6.03 hereof.

"Purchase Price" means the price set forth in Appendix A.

"Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated Investment Grade.

"Replacement Contract" means a contract having a term, transaction quantity, delivery rate, delivery point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement.

"Replacement Price" means the price at which Department, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Firm Energy not delivered by Seller hereunder, plus (i) costs reasonably incurred by Department in purchasing such substitute Firm Energy and (ii) additional transmission or other charges, if any, reasonably incurred by Department to the Delivery Point, or at Department's option, the market price at the Delivery Point for such Firm Energy not delivered as determined by Department in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Department be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For purposes of this definition, Department shall be considered to have purchased replacement Firm Energy to the extent Department shall have entered into one or more arrangements in a commercially reasonable manner whereby Department repurchases its obligation to sell and deliver the Firm Energy from another party at the Delivery Point.

"Sale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Firm Energy not received by Department, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department's liability. For purpose of this definition, Seller shall be considered to have resold such Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Firm Energy from another party at the Delivery Point.

"S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.04.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

"Water Code" means the California Water Code Section 80000 *et seq.*

ARTICLE II PURCHASE AND SALE OF FIRM ENERGY

Section 2.01. Purchase and Sale of Firm Energy. Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Firm Energy at the Delivery Point, and the Department shall pay the Seller the Purchase Price. The Seller shall be responsible for any costs or charges imposed on or associated with the Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Firm Energy or its receipt at and from the Delivery Point.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers, as specified by the Seller, or in the absence thereof, in accordance with the practice of the transmission providers, to deliver the Firm Energy to the Delivery Point. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Firm Energy at the Delivery Point. All deliveries shall be prescheduled subject to any conditions agreed to by schedulers. The Seller shall be responsible for ensuring that Firm Energy deliveries are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point.

Section 2.03. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of the Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Agreement, and any other payment obligation or liability of or judgement against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.04. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, the Department covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by the Department pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of the Department pursuant this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.

Section 2.05. Term. The term of this Agreement (the “Term”) shall be set forth in Appendix A. This Agreement shall terminate upon expiration of the term specified in Appendix A.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) The Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) Assuming due and proper execution hereof by the Seller, this Agreement, constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. To the best of Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of

the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or petition have been presented or instituted for its winding-up or liquidation.

ARTICLE IV PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. The Department shall use its best efforts to ensure that payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15%.

Section 4.04 Disputes. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct

amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Department nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

Section 4.05. Records Retention and Audit.

(a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after final payment under this Agreement. Within three years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

**ARTICLE V
UNCONTROLLABLE FORCES**

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term " Uncontrollable Force " means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force

shall not be based on (i) the loss of the Department's markets; (ii) the Department's inability economically to use or resell the Firm Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Firm Energy at a price greater than the Purchase Price.

The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE VI EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Agreement pursuant to Section 7.01 of this Agreement, or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under

this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of termination. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to or seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided,

however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

(e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) days after receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

ARTICLE VII CREDITWORTHINESS

Section 7.01. Creditworthiness. In the event that (a) the Seller or its Guarantor does not have long-term senior lien debt rated Investment Grade on the effective date of this Agreement, or (b) should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Department in the Department's reasonably exercised discretion, the Department may require the Seller to provide, at the Seller's option (but subject to the Department's acceptance based upon reasonably exercised discretion), either (i) the posting of a Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Department. The Seller's obligations under this Section 7.01 shall be in an amount sufficient to cover (1) in case the remaining Term is less than one year, 100% of the Termination Payment, or (2) in case the remaining Term is one year or more, 25% of the Termination Payment, in each case calculated as if Article VI applied. Events which may trigger the Department questioning the Seller's creditworthiness, financial responsibility, or performance viability pursuant to clause (b) above include, but are not limited to, the following:

- (A) The Department has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.
- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Department, materially and adversely impact the Seller's ability to perform under this Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefor, that will be considered an Event of Default under Section 6.01 of this Agreement and the Department shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

ARTICLE VIII DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, either party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be appointed pursuant to CA CCP §1281.6 and the party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) days of the appointment of the arbitrator, the party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each party shall at the same time as such submission deliver copies of its submission to the other party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the parties. The parties shall bear their own costs and share the arbitrator's expenses equally.

ARTICLE IX REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Section 9.01. Seller Failure. If Seller fails to schedule and/or deliver all or part of the Firm Energy, and such failure is not excused under the terms of this Agreement or by Department's failure to perform, then Seller shall pay Department, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Purchase Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

Section 9.02. Department Failure. If Department fails to schedule and /or receive all or part of the Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Department shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE X MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Firm Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Firm Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Firm Energy.

Section 10.08. Transfer of Interest in Agreement. No party shall voluntarily assign or transfer this Agreement or any portion thereof without the written consent and approval of the other party. Any successor or assignee of the rights of any party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original party under this Agreement, and no assignment or transfer of any rights under this Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement. The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 10.08.

Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder; provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body

having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. None of a party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix B.

Section 10.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof or payments pursuant to Section 9.01 hereof.

Section 10.18. Application of Government Code and the Public Contracts Code. Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, the Department has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

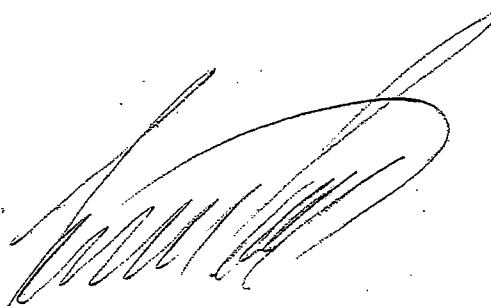
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the 24th day of August, 2001.

INTERCOM ENERGY, INC.

By: ERNESTO PALLARES C.

Title: C.E.O.

Date: 24 08 01



CALIFORNIA DEPARTMENT OF WATER RESOURCES, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: [Signature]

Title: Acting Deputy Director

Date: 8/24/01

Appendix A - Firm Energy

Product: 6x16 firm (LD)

Purchase Price: \$ 45/MWh

Term: 9/1/2001 through 8/31/03 with the Term to commence as determined by Seller upon 30 days notice to Department

Delivery Rate: 200MW

Delivery Point: Point on CAISO grid in NP 15 mutually agreeable to Seller and Department

Seller must have a scheduling coordinator.

Appendix B - Addresses

SELLER

Billing Address:
1127 11th Street Suite 905
Sacramento CA 95814

Notice Address:
1127 11th Street, Suite 905
Sacramento, CA 95814

Authorized Representative:
Peter Weiner
Robert P. Hoffman
Javier Salas Harms

DEPARTMENT

Billing Address:
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814
Attn: Executive Manager Power Systems

Notice Address:
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814
Attn: Executive Manager Power Systems

Authorized Representative:
Pete Garris,
Acting CDWR Deputy Director